

IN RE: PETITION FOR SPECIAL HEARING
SE/S Rayville Road, 650' NE of
the c/l of Spook Hill Road
(18653 Spook Hill Road)
6th Election District
3rd Councilmanic District
Robert A. Belcher, et ux
Petitioners

* BEFORE THE
* DEPUTY ZONING COMMISSIONER
* OF BALTIMORE COUNTY
* Case No. 92-172-SPH

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The Petitioners herein request a special hearing to approve the non-density transfer of 4.918 acres, more or less, zoned R.C. 2 to an adjoining parcel, also zoned R.C. 2, as more particularly described on Petitioner's Exhibits 1 through 3.

The Petitioners, by Robert A. Belcher, appeared, testified and were represented by Howard A. Alderman, Esquire. Also appearing on behalf of the Petitioners were Thomas A. LaMonica, John Hutchinson, Bob Thompson, David Wangerin, David Marshall, and Ken Smith. There were no Protestants.

Testimony indicated that the property which is the subject of this matter is a 4.918 acre parcel owned by Robert and Christine Belcher. Said property is located off of Rayville Road in northern Baltimore County near the Pretty Boy Reservoir. The Petitioners desire to transfer this 4.918 acre parcel to an adjoining larger parcel which contains 64.470 acres and is located to the north and east of the subject property as depicted on Petitioner's Exhibit 1B. The reason for this transfer is primarily for agricultural purposes and satisfies the spirit and intent of the R.C. 2 zoning classification. This is evidenced by the supportive comments submitted by the Office of Planning and Zoning dated November 12, 1991. After this transfer is made, the Belchers will retain 44.345 acres of property for their own use in accordance with that depicted on Petition-

er's Exhibit 1A. The Petitioners argued that the proposed use of the property would be in keeping with the rural character and nature of the surrounding uses in the area and would not result in any detriment to the public health, safety or general welfare.

After due consideration of the testimony and evidence presented, it is clear that practical difficulty or unreasonable hardship would result if the relief requested in the special hearing were not granted. It has been established that the requirements from which the Petitioner seeks relief would unduly restrict the use of the land due to the special conditions unique to this particular parcel. In addition, the relief requested will not be detrimental to the public health, safety, and general welfare.

Pursuant to the advertisement, posting of the property, and public hearing on this Petition held, and for the reasons given above, the special hearing should be granted.

THEREFORE, IT IS ORDERED by the Deputy Zoning Commissioner for Baltimore County this 18th day of February, 1992 that the Petition for Special Hearing to approve the non-density transfer of 4.918 acres more or less zoned R.C. 2 to an adjoining parcel, also zoned R.C. 2, in accordance with Petitioner's Exhibits 1 through 3, inclusive, be and is hereby GRANTED, subject to the following restrictions:

- 1) The Petitioner is hereby made aware that proceeding at this time is at his own risk until such time as the 30-day appellate process from this Order has expired. If, for whatever reason, this Order is reversed, the relief granted herein shall be rescinded.
- 2) Within thirty (30) days of the date of this Order, Petitioners shall record two new deeds in the Land Records of Baltimore County which reference this case and incorporate the relief granted herein. These two new deeds shall adjust the property description for the Belcher property out of which the subject transfer was made and also redescribe the 64.470 acre parcel that was the recipient of this non-density transfer.

- 2 -

A copy of the newly recorded deed shall be submitted to the Zoning Commissioner's Office for review and inclusion in the case file.

3) When applying for any building permits, the site plan and/or landscaping plan filed must reference this case and set forth and address the restrictions of this Order.

Timothy M. Kotroco
TIMOTHY M. KOTROCO
Deputy Zoning Commissioner
for Baltimore County

TMK:bjs

ORDER RECEIVED FOR FILING
Date 2/18/92
By [Signature]

- 3 -

Baltimore County Government
Zoning Commission
Office of Planning and Zoning



Suite 113, Courthouse
400 Washington Avenue
Towson, MD 21204

(410) 887-4386

February 18, 1992

Howard L. Alderman, Jr., Esquire
305 W. Chesapeake Avenue, Suite 113
Towson, Maryland 21204

RE: PETITION FOR SPECIAL HEARING
SE/S Rayville Road, 650' NE of the c/l of Spook Hill Road
(18653 Spook Hill Road)
6th Election District - 3rd Councilmanic District
Robert A. Belcher, et ux - Petitioners
Case No. 92-172-SPH

Dear Mr. Alderman:

Enclosed please find a copy of the decision rendered in the above-captioned matter. The Petition for Special Hearing has been granted in accordance with the attached Order.

In the event any party finds the decision rendered is unfavorable, any party may file an appeal to the County Board of Appeals within thirty (30) days of the date of this Order. For further information on filing an appeal, please contact Ms. Charlotte Radcliffe at 887-3391.

Very truly yours,

Timothy M. Kotroco
TIMOTHY M. KOTROCO
Deputy Zoning Commissioner
for Baltimore County

TMK:bjs

cc: Mr. Thomas A. LaMonica
1700 Rayville Road, Parkton, Md. 21120

People's Counsel

File

Petition for Special Hearing

to the Zoning Commissioner of Baltimore County 92-172-SPH

The undersigned, legal owner(s) of the property situate in Baltimore County and which is described in the description and plat attached hereto and made a part hereof, hereby petition for a Special Hearing under Section 506.7 of the Baltimore County Zoning Regulations, to determine whether or not the Zoning Commissioner and/or Deputy Zoning Commissioner should approve the non-density transfer of 4.918 acres, more or less, zoned RC-2, to the adjoining parcel, also zoned RC-2, as more particularly shown on the plat attached hereto.

Property is to be posted and advertised as prescribed by Zoning Regulations.

I, or we, agree to pay expenses of the above Special Hearing advertising, posting, etc., upon filing of this Petition, and further agree to and are to be bound by the zoning regulations and restrictions of Baltimore County adopted pursuant to the Zoning Law for Baltimore County.

I/we do solemnly declare and affirm, under the penalties of perjury, that I/we are the legal owner(s) of the property which is the subject of this Petition.

Contract Purchaser/Lessee:
(Type or Print Name)
Signature
Address
City and State
Attorney for Petitioner:
Howard L. Alderman, Jr.
Levin & Gann, P.A.
305 W. Chesapeake Avenue
Suite 113
Towson, Maryland 21204
Attorney's Telephone No.: 321-0600

Legal Owner(s):
ROBERT A. BELCHER
(Type or Print Name)
Signature
CHRISTINE A. BELCHER
(Type or Print Name)
Signature
P.O. Box 1287 527-0493
Address Phone No.
Cockeysville, MD 21030
City and State
Name, address and phone number of legal owner, contract purchaser or representative to be contacted
H.L. Alderman, Jr., Esq.
Levin & Gann, P.A.
305 W. Chesapeake Ave. #113
Towson, MD 21204 (301) 321-0600

ORDER RECEIVED FOR FILING

Date 2/18/92
By [Signature]



OFFICE USE ONLY
ESTIMATED LENGTH OF HEARING - 1/2HR. + 1HR.
AVAILABLE FOR HEARING
MON./TUES./WED. - NEXT TWO MONTHS
ALL OTHERS
REVIEWED BY: DATE

Joseph W. Shaw
PROFESSIONAL LAND SURVEYOR
P.S.L.S. - FELLOW A.C.S.M. - N.S.P.S.
47 West Pennsylvania Avenue
STEWARDSTOWN, PA 17383
Phone: (717) 963-3102

92-172-SPH

ROBERT A. & CHRISTINE A. BELCHER
SIXTH ELECTION DISTRICT
BALTIMORE COUNTY, MARYLAND

ZONING DESCRIPTION

Beginning at a point being S 34°47'E, 251.60' from the centerline of Rayville Road which is 650' northeast of the intersection of Spook Hill Road (30' wide) with Rayville Road (30' wide).

Being part of the property recorded in Deed Liber 8898, Folio 074 containing 4.918 acres. Also known as 18653 Spook Hill Road, 6th. Election District.

- (1) N 56°24'36"E, 684.75'
- (2) S 43°47'27"E, 136.13'
- (3) S 27°55'00"W, 295.26'
- (4) S 5°05'00"W, 134.47'
- (5) S 56°19'00"W, 346.56' and
- (6) N 36°24'56"W, 380.84'.

CERTIFICATE OF POSTING

ZONING DEPARTMENT OF BALTIMORE COUNTY
Towson, Maryland

92-172-SPH

District 6th Date of Posting October 30, 1991
Posted for: Special Hearing
Petitioner: Robert A. Belcher et ux
Location of property: SE/S Rayville Road, 650' NE of c/l Spook Hill Road
Location of Sign: In front of 18653 Spook Hill Road
Remarks:
Posted by: S.J. Drake Date of return: November 1, 1991
Number of Signs: 1

CERTIFICATE OF POSTING

ZONING DEPARTMENT OF BALTIMORE COUNTY
Towson, Maryland

92-172-SPH

District 6th Date of Posting 1/18/92
Posted for: Special Hearing
Petitioner: Robert A. Belcher et ux
Location of property: SE/S Rayville Road, 650' NE of c/l Spook Hill Road
Location of Sign: Spook Hill Rd. at intersection of driveway
Remarks:
Posted by: [Signature] Date of return: 1/20/92
Number of Signs: 1

CERTIFICATE OF PUBLICATION

TOWSON, MD. 10/31, 1991

THIS IS TO CERTIFY, that the annexed advertisement was published in THE JEFFERSONIAN, a weekly newspaper published in Towson, Baltimore County, Md., once in each of 1 successive weeks, the first publication appearing on 10/31, 1991.

THE JEFFERSONIAN,

S. Zeke Orlov
Publisher

\$78.67

CERTIFICATE OF PUBLICATION

TOWSON, MD. 10/31, 1991

THIS IS TO CERTIFY, that the annexed advertisement was published in TOWSON TIMES, a weekly newspaper published in Towson, Baltimore County, Md., once in each of 1 successive weeks, the first publication appearing on 10/31, 1991.

TOWSON TIMES,

S. Zeke Orlov
Publisher

\$78.67

BALTIMORE COUNTY, MARYLAND
OFFICE OF FINANCE - REVENUE DIVISION
MISCELLANEOUS CASH RECEIPT

No. 123179

DATE: 1/22/92 ACCOUNT: 103.67

AMOUNT \$ 103.67

RECEIVED FROM: 103.67

FOR: 103.67

VALIDATION OR SIGNATURE OF CARRIER
DATE: 1/22/92 TIME: 10:00 AM

Baltimore County Government
Office of Zoning Administration
and Development Management
Office of Planning & Zoning

111 West Chesapeake Avenue
Towson, MD 21204 (410) 887-3353

DATE: 1-22-92

Robert and Christine Belcher
P. O. Box 1287
Cockeysville, Maryland 21030

RE:
Case Number: 92-172-SPH
SE/8 Bayville Road, 650' NE of c/l Spook Hill Road
18653 Spook Hill Road
6th Election District - 3rd Councilmanic
Petitioner(s): Robert A. Belcher, et ux

Dear Petitioner(s):

Please be advised that \$ 103.67 is due for advertising and posting of the above captioned property.

THIS FEE MUST BE PAID. ALSO, THE ZONING SIGN & POST SET(S) MUST BE RETURNED ON THE DAY OF THE HEARING OR THE ORDER SHALL NOT ISSUE. DO NOT REMOVE THE SIGN & POST SET(S) FROM THE PROPERTY UNTIL THE DAY OF THE HEARING.

Please forward your check via return mail to the Zoning Office, County Office Building, 111 W. Chesapeake Avenue, Room 113, Towson, Maryland 21204. It should have your case number noted thereon and be made payable to Baltimore County, Maryland. In order to prevent delay of the issuance of proper credit and/or your Order, immediate attention to this matter is suggested.

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ZONING COMMISSIONER
BALTIMORE COUNTY, MARYLAND

Howard L. Alderman, Jr., Esq.

Baltimore County Government
Office of Zoning Administration
and Development Management
Office of Planning & Zoning

111 West Chesapeake Avenue
Towson, MD 21204 (410) 887-3353

DATE: 1-5-91

Robert and Christine Belcher
P. O. Box 1287
Cockeysville, Maryland 21030

RE:
Case Number: 92-172-SPH
SE/8 Bayville Road, 650' NE of c/l Spook Hill Road
18653 Spook Hill Road
6th Election District - 3rd Councilmanic
Petitioner(s): Robert A. Belcher, et ux
HEARING - WEDNESDAY, NOVEMBER 20, 1991 at 9:00 a.m.

Dear Petitioner(s):

Please be advised that \$ 103.67 is due for advertising and posting of the above captioned property.

THIS FEE MUST BE PAID. ALSO, THE ZONING SIGN & POST SET(S) MUST BE RETURNED ON THE DAY OF THE HEARING OR THE ORDER SHALL NOT ISSUE. DO NOT REMOVE THE SIGN & POST SET(S) FROM THE PROPERTY UNTIL THE DAY OF THE HEARING.

Please forward your check via return mail to the Zoning Office, County Office Building, 111 W. Chesapeake Avenue, Room 113, Towson, Maryland 21204. It should have your case number noted thereon and be made payable to Baltimore County, Maryland. In order to prevent delay of the issuance of proper credit and/or your Order, immediate attention to this matter is suggested.

Lawrence E. Schmidt
ZONING COMMISSIONER
BALTIMORE COUNTY, MARYLAND

Howard L. Alderman, Jr., Esq.

Baltimore County Government
Office of Zoning Administration
and Development Management
Office of Planning & Zoning

111 West Chesapeake Avenue
Towson, MD 21204 (410) 887-3353

DATE: OCTOBER 22, 1991

COPY

NOTICE OF HEARING

The Zoning Commissioner of Baltimore County, by authority of the Zoning Act and Regulations of Baltimore County will hold a public hearing on the property identified herein in Room 118, Baltimore County Courthouse, 400 Washington Avenue, Towson, Maryland 21204 as follows:

Case Number: 92-172-SPH
SE/8 Bayville Road, 650' NE of c/l Spook Hill Road
18653 Spook Hill Road
6th Election District - 3rd Councilmanic
Petitioner(s): Robert A. Belcher, et ux
HEARING: WEDNESDAY, NOVEMBER 20, 1991 at 9:00 a.m.

Special Hearing to approve the non-density transfer of 4.918 acres, more or less, to the adjoining parcel.

Lawrence E. Schmidt
Zoning Commissioner of
Baltimore County

cc: Robert A. Belcher, et ux
Howard L. Alderman, Jr., Esq.

Baltimore County Government
Office of Zoning Administration
and Development Management
Office of Planning & Zoning

111 West Chesapeake Avenue
Towson, MD 21204 (410) 887-3353

JAN 09 1992

NOTICE OF HEARING

The Zoning Commissioner of Baltimore County, by authority of the Zoning Act and Regulations of Baltimore County will hold a public hearing on the property identified herein in Room 118, Baltimore County Courthouse, 400 Washington Avenue, Towson, Maryland 21204 as follows:

Case Number: 92-172-SPH
SE/8 Bayville Road, 650' NE of c/l Spook Hill Road
18653 Spook Hill Road
6th Election District - 3rd Councilmanic
Petitioner(s): Robert A. Belcher, et ux
HEARING: WEDNESDAY, FEBRUARY 5, 1992 at 2:00 p.m.

Special Hearing to approve the non-density transfer of 4.918 acres, more or less, to the adjoining parcel.

Lawrence E. Schmidt
Zoning Commissioner of
Baltimore County

cc: Robert A. Belcher, et ux
Howard L. Alderman, Jr., Esq.

Baltimore County Government
Office of Zoning Administration
and Development Management
Office of Planning & Zoning

111 West Chesapeake Avenue
Towson, MD 21204 (410) 887-3353

November 6, 1991

Howard L. Alderman, Esquire
Levin & Gann, P.A.
305 W. Chesapeake Avenue
Suite 113
Towson, MD 21204

RE: Item No. 181, Case No. 92-172-SPH
Petitioner: Robert A. Belcher, et ux
Petition for Special Hearing

Dear Mr. Alderman:

The Zoning Plans Advisory Committee (ZAC) has reviewed the plans submitted with the above referenced petition. The attached comments from each reviewing agency are not intended to assure that all parties, i.e. Zoning Commissioner, attorney and/or the petitioner, are made aware of plans or problems with regard to the proposed improvements that may have a bearing on this case.

Enclosed are all comments submitted thus far from the members of ZAC that offer or request information on your petition. If additional comments are received from other members of ZAC, I will forward them to you. Otherwise, any comment that is not informative will be placed in the hearing file. This petition was accepted for filing on the date of the enclosed filing certificate and a hearing scheduled accordingly.

The following comments are related only to the filing of future zoning petitions and are aimed at expediting the petition filing process with this office.

1) The Director of Zoning Administration and Development Management has instituted a system whereby seasoned zoning attorneys who feel that they are capable of filing petitions that comply with all aspects of the zoning regulations and petitions filing requirements can file their petitions with this office without the necessity of a review by Zoning personnel.

Zoning Plans Advisory Committee Comments
Date: November 6, 1991
Page 2

- 2) Anyone using this system should be fully aware that they are responsible for the accuracy and completeness of any such petition. All petitions filed in this manner will be reviewed and commented on by Zoning personnel prior to the hearing. In the event that the petition has not been filed correctly, there is always a possibility that another hearing will be required or the Zoning Commissioner will deny the petition due to errors or incompleteness.
- 3) Attorneys and/or engineers who make appointments to file petitions on a regular basis and fail to keep the appointment without a 72 hour notice will be required to submit the appropriate filing fee at the time future appointments are made. Failure to keep these appointments without proper advance notice, i.e. 72 hours, will result in the loss of filing fee.

Very truly yours,
James E. Dyer
JAMES E. DYER
Chairman
Zoning Plans Advisory Committee

JED:jw

Enclosures

cc: Mr. & Mrs. Robert A. Blecher
P.O. Box 1287
Cockeysville, MD 21030

Baltimore County Government
Office of Zoning Administration
and Development Management
Office of Planning & Zoning

111 West Chesapeake Avenue
Towson, MD 21204 (410) 887-3353

Your petition has been received and accepted for filing this 9th day of October, 1991.

Arnold Jablon
DIRECTOR

Received By:
James E. Dyer
Chairman,
Zoning Plans Advisory Committee

Petitioner: Robert A. Belcher, et ux
Petitioner's Attorney: Howard L. Alderman

BUREAU OF TRAFFIC ENGINEERING
DEPARTMENT OF PUBLIC WORKS
BALTIMORE COUNTY, MARYLAND

DATE: November 6, 1991

TO: Mr. Arnold Jablon, Director
Office of Zoning Administration
and Development Management

FROM: Rahee J. Famili

SUBJECT: Z.A.C. Comments

Z.A.C. MEETING DATE: October 22, 1991

This office has no comments for item numbers 124, 166, 167, 168, 169, 173, 174, 175, 176, 179, 180, 181, 182, 184, 186, 187, 188 and 189.

Rahee J. Famili
Rahee J. Famili
Traffic Engineer II

RJF/lvd

Baltimore County Government
Fire Department



700 East Joppa Road, Suite 901
Towson, MD 21204-5500

(410) 887-4500

OCTOBER 24, 1991

Arnold Jablon
Director
Zoning Administration and
Development Management
Baltimore County Office Building
Towson, MD 21204

RE: Property Owner: ROBERT A. BELCHER

Location: STAGED STONE HILL ROAD

Item No.: 181 Zoning Agenda: OCTOBER 22, 1991

Gentlemen:

Pursuant to your request, the referenced property has been reviewed by this Bureau and the comments below are provided to be corrected or incorporated into the final plans for the property.

7. The Fire Prevention Bureau has no comments at this time.

REVIEWER: *[Signature]* Noted and Approved *[Signature]*
Planning Commission
Special Inspection Division

JP/REE

12-172-SPH 11/2/91

BALTIMORE COUNTY, MARYLAND
INTER-OFFICE CORRESPONDENCE

TO: Arnold Jablon, Director DATE: October 29, 1991
Zoning Administration and Development Management

FROM: Robert W. Bowling, P.E.

RE: Zoning Advisory Committee Meeting
for October 22, 1991

The Developers Engineering Division has reviewed the subject zoning items and we have no comments for Items 124, 167, 168, 169, 170, 173, 176, 178, 179, 180, 184, 186, 187, 188 and 189.

In addition, we have no comments at this time for Item #438 (Case No. 91-466).

For Item 166, we will have no comments until the County Review Group Meeting.

For Item 171, see our County Review Group comments dated October 10, 1991.

For Items 174 and 175, minor subdivision review comments were prepared for this site, dated October 9, 1990.

Item 181 represents a minor subdivision, which should be processed through the minor subdivision procedures.

For Item 182, no comments are necessary on density transfer.

[Signature]
ROBERT W. BOWLING, P.E., Chief
Developers Engineering Division

RWB:s

BALTIMORE COUNTY, MARYLAND
INTER-OFFICE CORRESPONDENCE

TO: Arnold Jablon, Director DATE: November 12, 1991
Zoning Administration and Development Management

FROM: Pat Keller, Deputy Director
Office of Planning and Zoning

SUBJECT: Belcher Property, Item No. 181

In reference to the applicant's request, staff offers the following comments:

This Office supports the request for the nondensity transfer of the 4.918 acre Belcher property to the 64.420 acre La Monica tract. The proposal meets the spirit of zoning policy RSD-8 which provides for the transfer of small parcels for agricultural proposes.

If there should be any further questions or if this office can provide additional information, please contact Jeffrey Long in the Office of Planning at 887-3211.

PK/JL/rdn

ITEM181/TXTROZ

BALTIMORE OFFICE
MERCANTILE BANK & TRUST BUILDING
2 HOPKINS PLAZA
9TH FLOOR
BALTIMORE, MARYLAND 21201
301-530-3700
TELECOPIER 301-627-0090

LAW OFFICES
LEVIN & GANN
A PROFESSIONAL ASSOCIATION
305 W. CHESAPEAKE AVENUE
TOWSON, MARYLAND 21204
301-321-0600
TELECOPIER 301-296-2801

ELLIS LEVIN (883-1060)
CARROLL COUNTY OFFICE
1137 LIBERTY ROAD
STYKEVILLE, MD 21784

HOWARD L. ALDERMAN, JR.

November 8, 1991

HAND DELIVERED

Arnold Jablon, Director
Office of Zoning Administration
and Development Management
111 West Chesapeake Avenue
Room 109
Towson, Maryland 21204

RE: Consolidation of Issues
Request for Postponement

Dear Mr. Jablon:

I believe that you have met previously with Bill Hesson, Esquire, Mr. Thomas LaMonica and Mr. Robert Thompson regarding a parcel of land near Rayville and Spook Hill Roads. There had been an erroneous creation of three lots from a single parcel zoned RC-2. At your suggestion, two of the three lots have been recombined and a Special Hearing scheduled regarding the non-density transfer of the acreage comprising the previously created third lot.

Case No. 92-172-SPH has been scheduled for hearing on November 20, 1991. This hearing concerns the transfer of 4.9 acres from our clients, Mr. and Mrs. Belcher to the adjoining landowner, Mr. LaMonica. I have recently begun representing Mr. LaMonica in his pursuit of a Special Exception for a camp on the property which he currently owns, as well as the 4.9 acre parcel. Unfortunately delays have resulted in the preparation of the necessary plats through no fault of Mr. LaMonica.

In order that the requested non-density transfer and the soon to be filed request for a camp use be heard together, I am requesting a short postponement of Case No. 92-172-SPH. This will enable us to promptly file the Special Exception request. We would further request that once the S/E case is filed, both cases be scheduled for hearing at the same time.

BALTIMORE OFFICE
MERCANTILE BANK & TRUST BUILDING
2 HOPKINS PLAZA
9TH FLOOR
BALTIMORE, MARYLAND 21201
301-530-3700
TELECOPIER 301-627-0090

LAW OFFICES
LEVIN & GANN
A PROFESSIONAL ASSOCIATION
305 W. CHESAPEAKE AVENUE
TOWSON, MARYLAND 21204
301-321-0600
TELECOPIER 301-296-2801

ELLIS LEVIN (883-1060)
CARROLL COUNTY OFFICE
1137 LIBERTY ROAD
STYKEVILLE, MD 21784

HOWARD L. ALDERMAN, JR.

December 31, 1991

HAND-DELIVERED

Arnold Jablon, Director
Office of Zoning Administration
and Development Management
111 West Chesapeake Avenue
Towson, Maryland 21204

RE: Consolidation of Hearings
Case No.: 91-172-SPH
Petition for Special Exception

Dear Mr. Jablon:

I have, this morning, filed a Petition for Special Exception on properties currently owned by Mr. and Mrs. Robert Belcher and Mr. and Mrs. Thomas LaMonica. I have previously filed a Petition for Special Hearing on the Belcher property (Case No. 91-172-SPH), which hearing was postponed from November 20, 1991 so that it could be consolidated for hearing with the Petition filed today.

I am, therefore, requesting that a hearing be scheduled as soon as possible on the Petition filed today, and that Case No. 91-172-SPH be heard at the same time. Please advise me of the hearing date and do not hesitate to contact me if you need any additional information to process this request.

Very truly yours,

[Signature]
HOWARD L. ALDERMAN, JR.

HLAJT/lis

cc: Mr. Robert Thompson
Mr. and Mrs. Robert Belcher
Mr. and Mrs. Thomas La Monica

PLEASE PRINT CLEARLY

PETITIONER(S) SIGN-IN SHEET

NAME	ADDRESS
John Hutchinson	1019 FREELAND RD FREELAND, MD 21053
Robert A. Belcher	1700 Rayville Rd. Park, Md 21120
Robert Thompson	155 Chesapeake Ave Towson
David W. Belcher	1801 Spook Hill Rd. Park, Md 21120
David W. Belcher	1700 Rayville Rd. Park, Md 21120
David W. Belcher	1301 Glen Kitt Rd. Park, Md 21120
Ken Smith	404 Marlboro Rd. Bel. 21218

PARCEL A (shown in light blue) comprising 64.47 ± acres was purchased by Thomas LaMonica from Estate of Russell P. Hedrick by virtue of Agreement of Sale dated 11/24/90 [Hedrick title by deed 5959/918]

PARCEL B (shown in yellow) comprising 93.768 ± acres also purchased by Thomas LaMonica from Estate of Russell P. Hedrick by virtue of Agreement of Sale dated 11/24/90 [Hedrick title by deed 3441/096]

LaMonica assigned all right, title and interest in Agreement of Sale for two separately recorded parcels to La and Development Corporation

La and Development Corporation assigned its rights under Agreement of Sale with respect to 44.506 ± Acres of Parcel B to Thompson & Vantosh (shown as Parcel 1 - orange with hash marks) [Thompson and Vantosh purchased by deed 8696/238]

La and Development Corporation assigned its rights under Agreement of Sale with respect to 44.345 ± Acres to Belchers (shown as parcel 2 - green with hash marks) [Mr. and Mrs. Belcher purchased by deed 8696/250]

La and Development Corporation took title to existing Parcel A and newly created Parcel 3 (shown in purple hash marks) [La and Development Corp. purchased by deed 8696/235]

La and Development Corporation conveys 4.918 ± Acres to Belchers (Parcel 3) by deed 8898/072

Belchers combined 44.345 ± Acres (Parcel 2) with 4.918 ± Acres (Parcel 3) by deed 8898/074 thereby resulting in two lot subdivision of original Parcel B

PETITIONER'S
EXHIBIT 2B

Sheet No. 2

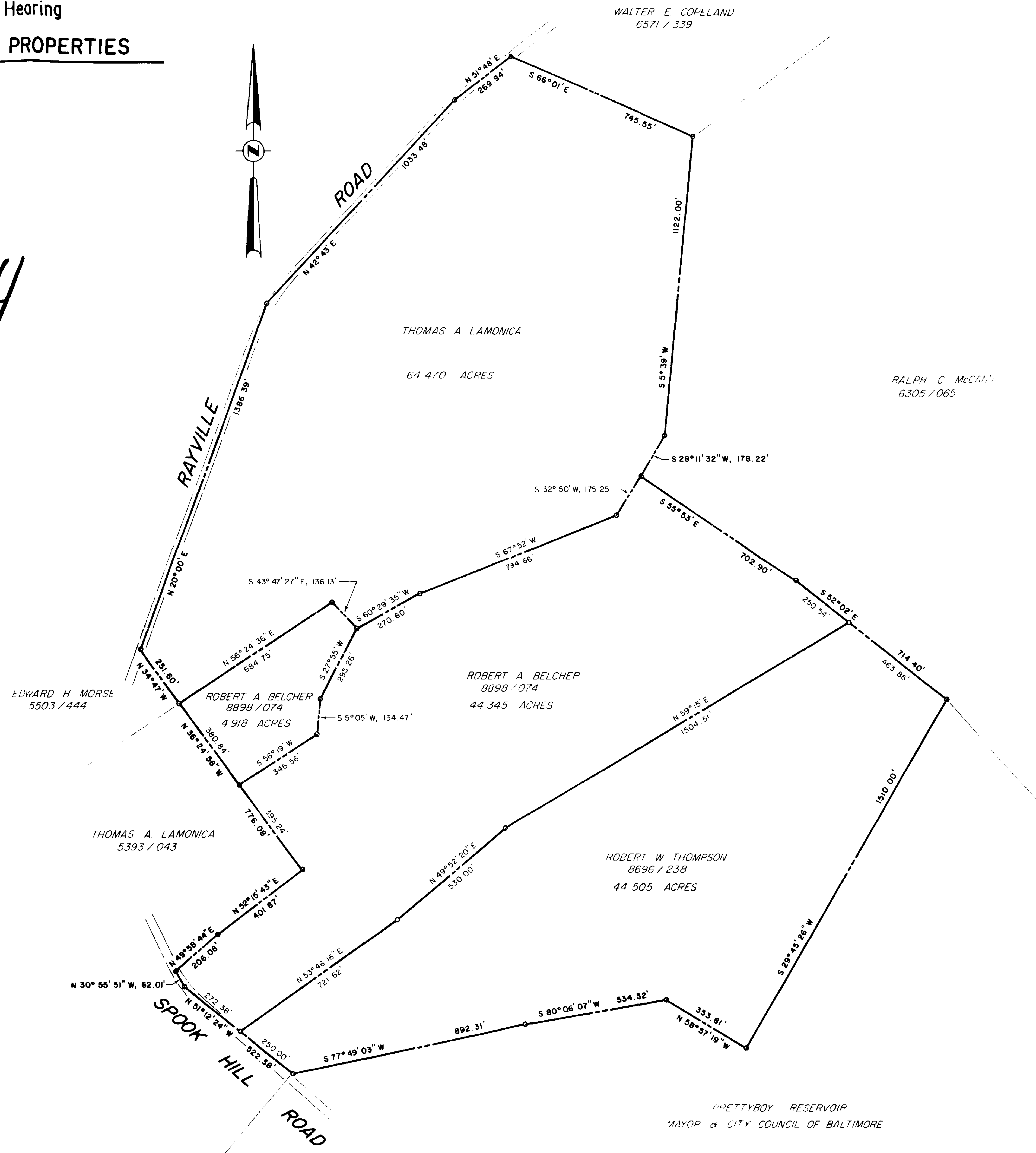
Plat to Accompany Petition for Special Hearing

THOMPSON, BELCHER, LAMONICA PROPERTIES

October 25, 1991

Scale: 1" = 200'

92-172-SPH



PETITIONER'S
EXHIBIT 1A

Plat to Accompany Petition for Special Hearing

PROPERTY ADDRESS: 18653 Spook Hill Rd.

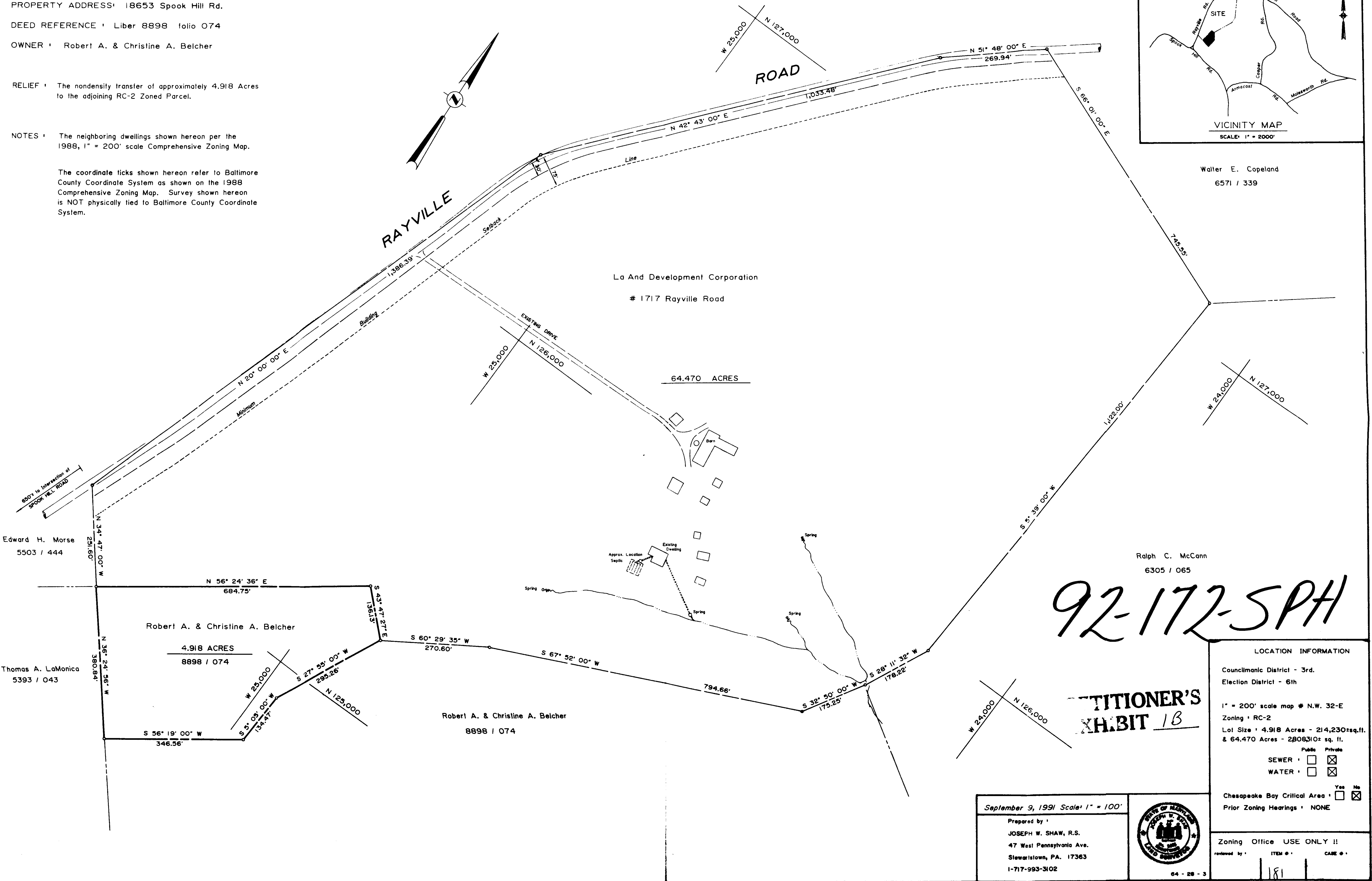
DEED REFERENCE: Liber 8898 folio 074

OWNER: Robert A. & Christine A. Belcher

RELIEF: The nondensity transfer of approximately 4.918 Acres to the adjoining RC-2 Zoned Parcel.

NOTES: The neighboring dwellings shown hereon per the 1988, 1" = 200' scale Comprehensive Zoning Map.

The coordinate ticks shown hereon refer to Baltimore County Coordinate System as shown on the 1988 Comprehensive Zoning Map. Survey shown hereon is NOT physically tied to Baltimore County Coordinate System.



Walter E. Copeland
6571 / 339

Ralph C. McCann
6305 / 065

92-172-SPH

PETITIONER'S
EXHIBIT 1B

LOCATION INFORMATION

Councilmanic District - 3rd.
Election District - 6th

1" = 200' scale map # N.W. 32-E
Zoning - RC-2
Lot Size - 4.918 Acres - 214,230± sq. ft.
& 64.470 Acres - 2,808,310± sq. ft.

Public Private
SEWER: ☐ ☒
WATER: ☐ ☒

Chesapeake Bay Critical Area: ☐ Yes ☒ No
Prior Zoning Hearings: NONE

September 9, 1991 Scale: 1" = 100'

Prepared by:
JOSEPH W. SHAW, R.S.
47 West Pennsylvania Ave.
Stewartstown, PA. 17363
1-717-993-3102



64-28-3

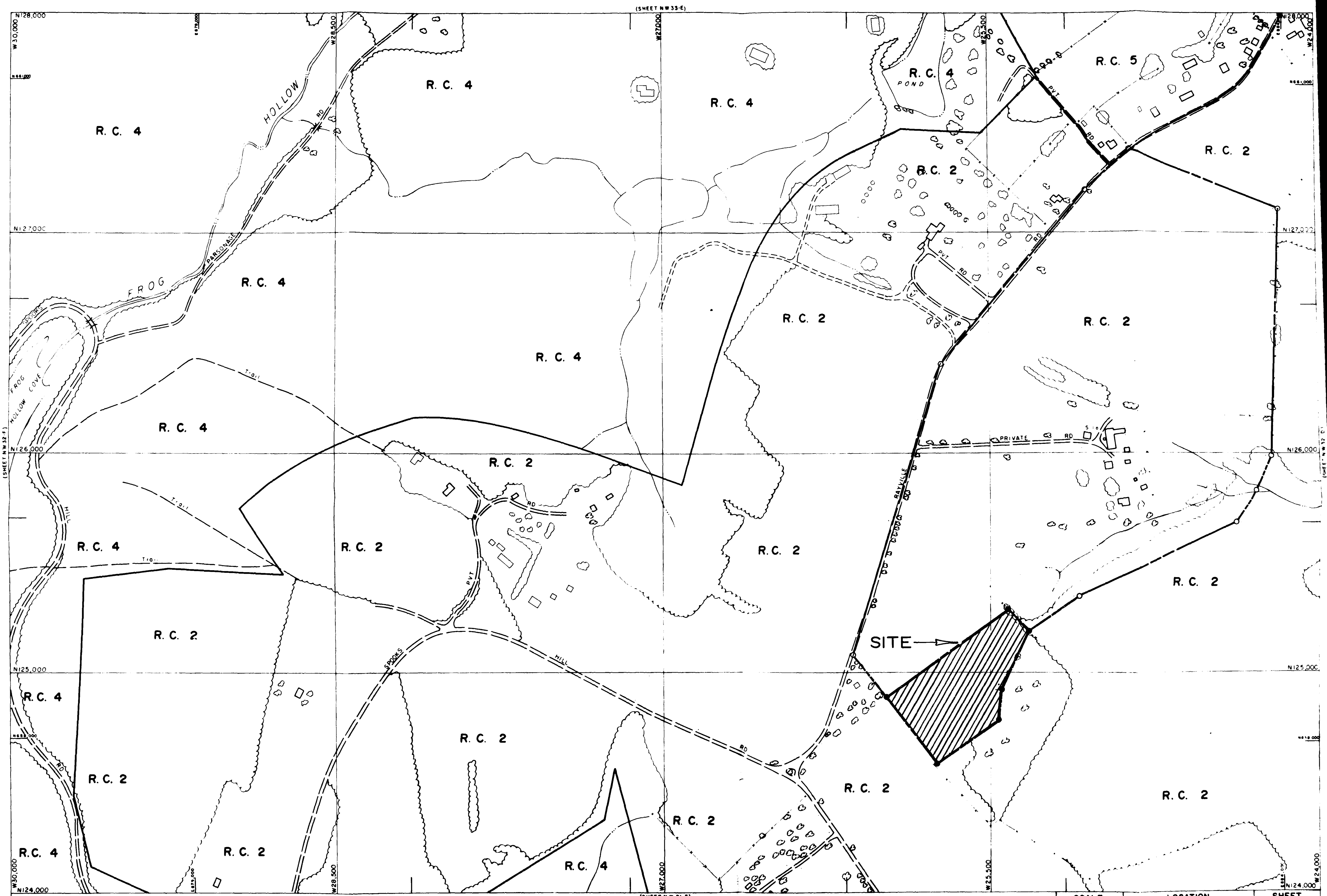
Zoning Office USE ONLY !!
reviewed by: ITEM # CASE #

181

Plat to Accompany Petition for Special Hearing

October 25, 1991 Scale : 1" = 200'





KK-SW

THIS MAP HAS BEEN REVISED IN SELECTED AREAS.
TOPOGRAPHY COMPILED BY PHOTOGRAMMETRIC METHODS
BY BUCHART-HORN, INC. BALTIMORE, MD. 21210

1988 COMPREHENSIVE ZONING MAP
Adopted by the Baltimore County Council
Oct. 13, 1988
BMC Nos. 144-88, 145-88, 146-88, 147-88, 148-88, 149-88, 150-88
Del. J. [Signature]
Chairman, County Council

BALTIMORE COUNTY
OFFICE OF PLANNING AND ZONING
OFFICIAL ZONING MAP

SCALE 1" = 200'	LOCATION SOUTHWEST OF RAYVILLE	SHEET NW 32-E 181
DATE OF PHOTOGRAPHY JANUARY 1986		

92-172-SPH

94 JUL 13 PM 12:01

92-173-SPH E. Robert Chertkof, et al.
v. People's Counsel for Baltimore County, Maryland, et al.
Appeals' Motion to Dismiss; Remand vacated; Judgment affirmed. (Moylan, Wenner, Motz)

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND
No. 1509
September Term, 1993

E. ROBERT CHERTKOF, et al.

v.

PEOPLE'S COUNSEL FOR BALTIMORE COUNTY, MARYLAND, et al.

Moylan,
Wenner,
*Motz,

JJ.

Per Curiam

Filed: July 12, 1994

*Motz, J. participated in the argument and decision in this case but resigned from the Court prior to the filing of the Opinion.

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#92CV10254

This appeal presents us with the application and interpretation of Baltimore County Zoning Regulation (BCZR) 1B01.2.A.2, concerning the clustering or averaging of density units across a subdivision "tract." Appellants, Howard Chertkof and Robert E. Chertkof, have proposed a development of two contiguous parcels of land in Catonsville, and relying on BCZR 1B01.2.A.2 for clustering the appropriate number of density units to accommodate their proposed development. Appellees, People's Counsel for Baltimore County, South Rolling Road Improvement Association, and Nan Florence, opposed appellants' proposed subdivision, and the applicability of BCZR 1B01.2.A.2. A series of hearings ensued, culminating with the County Board of Appeals (CBA) approving the application of BCZR 1B01.2.A.2, but conditioning its approval on the circuit court's determining that appellants held fee simple title to Parcel B. Appellants appealed to the Circuit Court for Baltimore County, which reversed the CBA and remanded the case to it for further proceedings. This appeal followed. For reasons we will explain, we shall affirm the judgment of the circuit court, with the exception of its remand order.¹

BACKGROUND

Appellants have proposed to develop 45 residential units on Parcel A, a rectangular parcel of about 7.6 acres of land. Parcel B, formerly the road bed of the Caton and Loudon Railroad Company, an irregularly shaped parcel of 29 acres of land is four miles

¹ We shall also deny appellees' Motion to Dismiss this appeal.

long. A portion of Parcel B is contiguous to the southern portion of Parcel A, but then leaves Parcel A and extends east to, and beyond, the Baltimore Beltway (I-695). Parcel B has been described as a long cat's tail, and Parcel A as a bell tied to the end of the tail.

When appellants submitted their proposal to the zoning authorities, Parcel A was zoned Density Residential (D.R.) 3.5, allowing 3.5 units per acre on Parcel A, or a total of approximately 27 units to be constructed on it. Parcel B, however, traversed a variety of D.R. zones. Thus, as permitted by BCZR 1B01.2.A.2, appellants proposed to "cluster" or "average" density across Parcels A and B, "as though it were in a single zone," in order to accommodate their proposed subdivision. BCZR 1B01.2.A.2² provides:

Application to Tract Divided by Zone Boundary.

Wherever a single tract is divided by a zone boundary so that portions of such tracts lie within D.R. zones of different classification, the total number of dwelling or density units permitted, as determined by multiplying the gross acreage of each portion by the maximum density permitted under Subsection 1B02.2 in the zone within which that portion lies and totalling the results, shall be permitted without further regard to the zone boundary, and the units may be distributed over the tract as though it were in a single zone.

BCZR 1B01.2.A.2 was enacted by the County in an attempt to foster housing diversity in Baltimore County. BCZR § 1B00. According to BCZR § 1B00's "Declaration of Findings," the County had determined

² We recognize that BCZR 1B01.2.A.2 was amended in 1992, after this controversy had begun. Unless otherwise indicated, all references will be to the zoning regulations in effect at times relevant to this case.

a single "tract," permitting appellants to cluster density units in that "tract," in accordance with § 1B01.2.A.2.

The Zoning Commissioner noted, however, that appellees had questioned appellants' title to Parcel B, and said

If the Petitioner does not have clear title to any portion of Parcel B, the density attributable to that portion may not be transferred to Parcel A. Apparently, certain questions of adverse possession and the resulting loss of ownership rights are at issue. Clearly the Zoning Commissioner does not possess the authority to resolve these questions of title. If the appropriate legal basis is established to confirm ownership, the transfer of density is permitted under Section 1B01.2A.2. It should be noted that, based upon the evidence before me, I would find that the Petitioners are the owners of Parcel A and B.

Appellees then noted an appeal to the CBA, and appellants noted a cross-appeal, contending that the Zoning Commissioner improperly excluded from the single "tract" that portion of Parcel B falling beyond I-695. At a hearing before the CBA, appellees contended that appellants did not hold fee simple title to Parcel B, and density clustering should not be permitted.

The CBA heard considerable testimony on the question of title. Appellants presented David Fishman, Esquire (Fishman), as an expert in such matters, and Fishman explained that it was not clear from the records what interest the railroad had acquired in many portions of Parcel B. Fishman pointed out that many of the records concerning the road bed acquired by the Caton and Loudon Railroad merely awarded the owners a dollar for the railroad's "right of use and occupancy." According to Fishman, in some instances the phrase "right to use and occupy" granted fee simple title. Often, however, the railroad merely acquired the right to

exclude others from the property, leaving the owner with reversionary rights.

From all of this, the CBA concluded that appellants were entitled to transfer units from Parcel B to Parcel A, emphasizing that "[t]here is nothing in the BCZR that this Board can find that would deny the transfer of units merely because a parcel is of an odd shape...." Nevertheless, the CBA's decision was conditioned on a determination by the circuit court that appellants held fee simple title to Parcel B:

This Board is not empowered in any way whatsoever to establish property rights or property ownership. That right belongs to the Circuit Court. It is the opinion of this Board that if ownership of the necessary contiguous acreage of Parcel B is established by Petitioner, the density units needed to build 45 homes . . . should be granted. However, no building permits nor recordation of plats should be permitted until the Circuit Court has found the ownership of Parcel B is sufficient to allow transfer of density to the Caton and Loudon Railroad.

Upon appeal to the Circuit Court for Baltimore County, the circuit court concluded that the CBA had not only mischaracterized the title issue, but had also not properly addressed other issues, and remanded the case to the CBA for further consideration. This appeal followed. Although both parties have framed the issues presented to us differently,³ we feel that we are presented with

³ Appellants frame the issues as follows:

1. Did the Baltimore County Board of Appeals exceed its statutory authority by making its order in a zoning case conditional on a matter admittedly outside of its jurisdiction?
2. Did the lower court err by remanding the case for further proceedings rather than resolving the legal question on appeal concerning the scope of authority of the (continued...)

but one issue: Whether Parcels A and B constitute a "tract" when appellants have not established that they hold fee simple title to Parcel B.

STANDARD OF REVIEW

In reviewing a decision of the CBA, the circuit court must determine whether the ruling was arbitrary, illegal, or capricious. *Art Wood v. Wiseburg*, 88 Md. App. 723, 727, 596 A.2d 712, *cert. denied*, 325 Md. 397 (1991). On appeal, we must repeat the circuit court's task to ensure that the circuit court did not err in its review. *Id.* at 728.

DISCUSSION

Appellants contend that the CBA exceeded its authority in conditioning appellants' clustering of density on the circuit court's determination that appellants owned Parcel B in fee simple. Pointing out that Md. Code Ann. Art. 25A, § 5(U) limits the CBA's jurisdiction to matters of zoning and local taxes, appellants cite numerous Maryland cases holding that administrative agencies cannot impose conditions concerning matters outside of the enabling statutes. In short, appellants contend that such *ultra vires* action

(...continued)

County Board of Appeals?

Appellees present these issues:

1. Whether the Appellants exhibited sufficient ownership interest in Parcel B to enable them to build residential dwelling units on Parcel B which they wish to transfer to Parcel A?
2. Whether the appellants complied with the requirements that the tracts for which transfer is sought be contiguous?

[t]hat zoning reclassifications based on lot sizes and types of housing have, in some situations, prevented the construction of the maximum number of housing units intended to be permitted on development tracts, especially in case of severe topographical variation, or have induced "cramped" layout or other undesirable subdivision-design characteristics as accommodation of maximum density is achieved.

BCZR § 1B00.1.C.

Thus, a new scheme was enacted partly in order to:

Allow greater flexibility in subdivision-development planning and provide for the inducement of more creative as well as more economic approaches to residential development, with the goal of desirable and distinctive identity and character of individual residential locales.

BCZR § 1B00.2.C.

BCZR § 1B01.2.A.2 furthers the County's goals by permitting a developer to manipulate the density units for the entire subdivision "tract" onto one smaller designated area, while leaving open the remainder of the "tract."

When appellants submitted their proposal, they were not permitted to apply BCZR 1B01.1.A.2 because of Parcel B's odd shape. At the suggestion of the Zoning Office, appellants sought and were granted a hearing before the Zoning Commissioner to consider whether BCZR 1B01.1.A.2 applied, despite the shape of Parcels A and B. In a written opinion, the Zoning Commissioner recognized that the principal issue was whether, in spite of their shape, Parcels A and B constituted a single "tract" as required by BCZR 1B01.2.A.2. The Zoning Commissioner concluded that "the word 'tract' connotes a parcel of land that exists wholly within a single community or locale," and determined that Parcel A and the portion of Parcel B falling between Parcel A and I-695 constituted

by the CBA requires that the condition of title be stricken and that CBA's approval of appellants' clustering of density be affirmed.

Although we agree that the zoning authorities are without authority to resolve issues of title, they are authorized to interpret Baltimore County's zoning provisions, and determine whether appellants can establish a single "tract" or "subdivision tract" when ownership of Parcel B has been challenged. Such a determination does not require the county's zoning authorities to resolve the issue of title, but merely to recognize that title problems exist.

We emphasize that the case *sub judice* was presented to the Zoning Commissioner for an interpretation of BCZR 1B01.2.A.2; in other words, whether Parcel B's odd shape prevents the application of BCZR 1B01.2.A.2. The Zoning Commissioner recognized that this was an issue subsumed within the question of whether Parcels A and B constituted a single "subdivision tract," as required by BCZR 1B01.2.A.2. As we see it, this remains the principal issue and the ownership of Parcel B is subsumed within this issue.⁴

⁴ It is apparent to us that whether appellants own Parcel B in fee simple and whether Parcels A and B constitute a single "tract" have evolved as separate issues because all involved have continuously referred to a proposed "transfer of density units." We emphasize, as the Court of Appeals pointed out in *People's Counsel v. Crown Development*, 328 Md. 303, 311, 614 A.2d 553 (1992), that BCZR 1B01.2.A.2 "do[es] not permit the transfer of density units between tracts; rather, it permits a degree of flexibility, or 'clustering,' within a single tract." Thus, appellants do not propose to "transfer" density units from Parcel B to Parcel A, but to calculate all of the density available from Parcels A and B, a single "tract," and concentrate the entire density onto a smaller portion of that "tract." Consequently, whether Parcels A and B constitute a single "tract" within the meaning of 1B01.2.A.2 is the only issue before us, and fee simple ownership of Parcel B is subsumed within that issue.